NO. SC86072

IN THE SUPREME COURT OF MISSOURI

STATE EX REL. LONNIE MATTHEWS,

Petitioner,

v.

HONORABLE MICHAEL J. MALONEY,

Respondent.

ORIGINAL PROCEEDING IN MANDAMUS

RESPONDENTS' STATEMENT, BRIEF AND ARGUMENT

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JURISDICTIONAL STATEMENT

This case is an original proceeding in mandamus. Petitioner seeks for this Court to order the respondent to request a report from the Department of Corrections and consider petitioner for release from confinement in the Department of Corrections. This Court has jurisdiction to determine original writs pursuant to Article V, §4, of the Missouri Constitution (as amended 1976).

STATEMENT OF FACTS

On November 16, 2001, petitioner Lonnie Matthews was intoxicated. Resp. Ex. A at 10-11. Petitioner, in an intoxicated state, drove his car northbound in the southbound lanes of U.S. Highway 169 in Clay County and hit a car driven by Candace Crawford, a seventeen-year-old high school senior, head-on, causing Ms. Crawford extreme physical injuries. Resp. Ex. A at 10-11. Ms. Crawford suffered a closed head trauma, brain fluid and blood leaking out of her ear, a crushed right femur, a "completely exploded" knee, two broken bones in her left arm, a collapsed left lung, and various other injuries. Resp. Ex. B at 6. Ms. Crawford, at the time of sentencing, had been through three surgeries for her injuries and was facing at least three more surgeries in addition to a future knee replacement surgery. *Id*.

As a result of this offense, petitioner was charged with one count of assault in the second degree, a class C felony. Petitioner ultimately pled guilty to one count of attempted assault in the second degree, a class D felony, in Clay County case no. CR101-4993F and was sentenced to five years in the custody of the Missouri Department of Corrections on October 31, 2002. Pet. Ex. C.

Petitioner Matthews filed a motion for release on probation, parole, or other early release pursuant to §558.016.8, RSMo Cum.Supp. 2003, on April 22, 2004.

Pet. Ex. D. Respondent denied the motion on May 13, 2004, after determining that petitioner was not entitled to relief in that §558.016.8 applies only to persons convicted of a non-violent offense and petitioner was convicted of a violent offense. Pet. Ex. E. Respondent did not request a report and recommendation from the Department of Corrections prior to denying petitioner's motion. After the Court of Appeals summarily denied petitioner mandamus relief without ordering a response to the petition, *State ex rel. Matthews v. Maloney*, no. WD64256 (Mo.App. W.D. June 17, 2004), petitioner Matthews sought relief in this Court through this mandamus action. This Court issued its preliminary writ on August 24, 2004.

ARGUMENT

This Court should quash its alternative writ of mandamus ordering respondent to request a report from the Department of Corrections because petitioner has no legal right to consideration for early release under §558.016.8, RSMo Cum.Supp. 2003 in that petitioner's offense, attempted assault in the second degree, is a violent offense.

Petitioner contends that this Court should compel respondent to order a report from the Department of Corrections as required by §558.016.8, RSMo Cum.Supp. 2003, and consider petitioner for early release from confinement under that statute. However, petitioner is ineligible for relief under §558.016.8 because he pled guilty to a violent offense based on the facts of this offense. Therefore, petitioner is not entitled to consideration for early release or the production of a Department of Corrections report analyzing the merits of petitioner's early release from imprisonment on judicial probation, judicial parole, or another form of supervision.

A. Standard for mandamus relief

The purpose of mandamus is "to execute, not adjudicate." *State ex rel. Missouri Growth Ass'n v. State Tax Comm'n*, 998 S.W.2d 786, 788 (Mo. banc 1999). Mandamus is appropriate only when "there is a clear, unequivocal, right to

be enforced," and is "only appropriate to require the performance of a ministerial act." *Id*.

B. Requirements for relief under §558.016.8

In this case, the question presented is whether a circuit court has a clear legal duty to request a report and recommendation from the Department of Corrections after an offender files a motion under §558.016.8 when the offender is statutorily ineligible for relief under §558.016.8. *See State ex rel. Nixon v. Russell*, 129 S.W.3d 867 (Mo. banc 2004).

Section 558.016.8 allows for the possibility of early release to offenders in the Department of Corrections who are convicted of a nonviolent class C or class D felony, who have not previously been committed to the Department of Corrections, and who have served at least 120 days of his or her sentence. If an offender meets these qualifications and files a motion in the trial court, the trial court should order a report from the Department of Corrections that details the offender's conduct in prison, possible alternatives to incarceration, and a recommendation on the offenders' release from imprisonment to probation, parole, or another alternative sentence.

In this case, petitioner Matthews meets some of the statutory requirements for respondent to order a report from the Department of Corrections under

§558.016.8. Petitioner was convicted of a class D felony as required by statute. Petitioner is serving his first felony incarceration in the Department of Corrections as required by statute. Petitioner has served more than 120 days in prison as required by statute. However, petitioner cannot show that his offense, attempted assault in the second degree, is a non-violent offense. Therefore, petitioner Matthews is not entitled to relief under §558.016.8 and respondent properly denied the petition without ordering a report from the Department of Corrections.

C. Petitioner's offense is violent under the totality of the circumstances

Section 558.016.8, RSMo Cum.Supp. 2003, requires that an offender be convicted of a "non-violent class C or D felony." The legislature chose not to establish a specific list defining which class C and D felonies are violent and which are non-violent in order to give specific meaning to this language. In light of the fact that the General Assembly understands how to define specific classes of felonies in order to obtain a clear result, *see* §556.061(8), RSMo Cum.Supp. 2003 (defining "dangerous felony), §558.016.5, RSMo Cum.Supp. 2003 (defining offenses that qualify offenders to be a persistent misdemeanor offender), *and* §558.018, RSMo 2000 (defining offenses that qualify offenders to be prior, persistent, or predatory sexual offenders), the General Assembly did not intend to specifically define which class C and D felonies were non-violent. The General

Assembly thus appears to have intended for a case-specific inquiry into the violent nature of an offense instead of a specific list of violent offenses or an elements test in order to determine whether an offense is violent under §558.016.8.

Respondent properly determined in this case that, based on the totality of the circumstances, that petitioner is not entitled to relief because he committed a violent offense. Petitioner caused substantial injuries to the victim, including closed head trauma, brain fluid and blood leaking out of her ear, a crushed right femur, a "completely exploded" knee, two broken bones in her left arm, a collapsed left lung, and various other injuries. Resp. Ex. B at 6. The victim at the time of sentencing had been through three surgeries for her injuries and was facing at least three more surgeries in addition to a future knee replacement surgery. *Id*. In the totality of circumstances surrounding petitioner's crime, this crime was a violent class D felony. Petitioner's actions in this case caused too much physical injury and damage for this case for petitioner to be considered for early release. As respondent aptly noted at sentencing, "the facts of this case cause me to think the range of punishment is not what it ought to be ... I think in this situation society expects the maximum punishment with no leniency to be shown ... this is just awful, and I think a judge needs to react to awful things by dealing with it sternly." Resp. Ex .B at 13, 14, 15. Petitioner's claim to the contrary in this Court should fail.

D. Petitioner's offense, attempted second-degree assault, is a violent offense

Petitioner contends that attempted assault in the second degree is a nonviolent offense for three reasons: first, because §217.010(11), RSMo 2000, controls this case and states by implication that attempted assault in the second degree is a non-violent offense; second, because the required mental state for assault in the second degree is criminal negligence and violence requires a higher mental state; and third, because petitioner's crime would not be considered a violent offense under federal law. Petitioner cannot prevail on any of these arguments.

1. Section 271.010(11), RSMo 2000, does not control this case

Petitioner contends that §217.010(11), RSMo 2000, controls the definition of "nonviolent" as used in §558.016.8. However, §217.010(11) defines a "nonviolent offender" as an offender who was convicted of murder in the first degree, murder in the second degree, involuntary manslaughter, forcible rape, forcible sodomy, robbery in the first degree, or assault in the first degree.

Section 558.016.8 looks to define "nonviolent class C and D felonies," not to generally define a nonviolent offense. Section 217.010(11) thus defines a different term than the one used in §558.016.8. The definition in §217.010(11) is valid only as defining the term "nonviolent offender." §217.010, RSMo 2000 ("As used in

this chapter and chapter 558, RSMo, unless the context clearly indicates otherwise, the following terms shall mean:"). The definition in §217.010(11) is not controlling in this case.

Further, the context of §217.010(11) and the uses of nonviolent offender in Chapter 217 support the conclusion that this language does not control §558.016.8. Section 217.010(11), defining "nonviolent offender", is found in Chapter 217 of the Missouri Statutes, the section creating the Department of Corrections. The only uses of the term "nonviolent offender" in Missouri statutes are in §217.362, RSMo Cum.Supp 2003, and §217.364, RSMo 2000. Section 217.362 requires the Department of Corrections to establish a long-term drug treatment program for chronic nonviolent offenders with substance abuse problems and gives the Department discretion to establish eligibility requirements for such a program. Section 217.364 requires that the Department of Corrections establish a 180-day substance-abuse program and opportunity for parole for incarcerated offenders and grants the Department of Corrections discretion to determine eligibility for entrance into the program. The definition of "nonviolent offender" in §217.010(11), read in context with the uses of the term "nonviolent offender," implies that §217.010(11) is for the Department of Corrections' use in implementing programs in the Department of Corrections and determining eligibility for those programs.

Sections 217.010(11) and 558.016.8 thus examine two different ideas: offenders in the Department of Corrections context and nonviolent Class C and D felonies in the sentencing judge's context. Section 217.010(11) does not control this case because of this difference. The classification of offenders for the purposes of eligibility and placement in Department of Corrections in-prison programs is inherently different that the classification of offenses for the purpose of determining the proper sentence for an offender.

Even if §217.010(11) was relevant to this case and shed light on the meaning of "nonviolent offense" in §558.016.8,[1] it strains reason to believe that the list of offenses in the statute is an exclusive list of violent offenses. Section 217.010(11) defines a violent offender as a person convicted of murder in the first degree, murder in the second degree, involuntary manslaughter, forcible rape, forcible sodomy, robbery in the first degree, or assault in the first degree. However, many

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[1]As discussed *infra*, involuntary manslaughter, an offense listed in §217.010(11) that earns an offender the "violent offender" tag, demonstrates that the legislature understands a violent offense to be a offense in which the physical force is used against a person other than the actor even for an offense with a required mental state of criminal negligence.

other offenses in the Missouri criminal code involve similar or identical elements to these offenses, such as domestic assault in the first and second degrees, §§565.072 and 565.073, RSMo 2000, assault in the second degree, §565.060, RSMo 2000, assault on a law enforcement officer in the first and second degrees, §§565.081 and 565.082, RSMo 2000, elder abuse in the first degree, §565.180, RSMo 2000, pharmacy robbery in the first and second degrees, §§569.025 and 569.035, RSMo 2000, and robbery in the second degree, §569.030, RSMo 2000. All of these offenses include an element of use or attempted use of physical force against another person. Further, other offenses, such as child molestation in the first degree, §566.067, RSMo 2000, increase the class of the felony if the offender causes serious physical injury to the victim. These offenses are at least as violent as, if not potentially more violent than, the offenses mentioned in §217.010(11).

In summary, all of the above offenses involve demonstrable violence. As §217.010(11) does not include the majority of these offenses, §217.010(11) cannot be conclusive as to which offenses are violent offenses under §558.016.8. Therefore, to the extent that §217.010(11) has relevance to this case, §217.010(11) does not contain a complete list of violent offenses for the purposes of §558.016.8 and the absence of assault in the second degree in §217.010(11) is not dispositive of this case.

2. Assault in the second degree is a violent offense regardless of the statutorily required *mens rea*

Petitioner advocates that this Court adopt an elements test to determine if a particular crime is violent or nonviolent. Petitioner's main argument is that petitioner's offense is nonviolent because petitioner did not act purposefully. Petitioner seems to allege that because assault in the second degree has a mental state of criminal negligence, and that violence must have a purpose, his offense cannot be considered a violent offense. Pet.Br. at 18-19.

However, as stated *infra* in this brief, the General Assembly did not require an elements test. By declining to give a definition for "nonviolent offense" in §558.016.8 and by declining to classify a list of offenses as "nonviolent offenses," the General Assembly has granted judges the power to look at each case under the circumstances of that particular case and determine if the offense in each individual case is violent or non-violent. Petitioner's crime in this case, under the totality of the circumstances of this case, including the extremely serious physical injuries suffered by the victim, is a violent crime under §558.016.8. Petitioner's claim thus fails under a totality of the circumstances test.

However, even assuming for the sake of argument that an elements test applies, petitioner cannot prevail. Petitioner argues that the mental state for an violent

offense must be greater than criminal negligence, the mental state required for assault in the second degree, petitioner's offense. However, petitioner's argument is undercut by the fact that the list of violent offenders in §217.010(11), RSMo 2000, although not directly controlling the result in this case, contains a offense with the mental state of criminal negligence. The legislature in §217.010(11) defined "violent offender" as an inmate who has been convicted, among other offenses, of involuntary manslaughter. The offense of involuntary manslaughter occurs when a person "recklessly causes the death of another person," §565.024.1(1), RSMo 2000, or "while in an intoxicated condition operates a motor vehicle in this state and, when so operating, acts with criminal negligence to cause the death of any person," §565.024.1(2), RSMo 2000, or "acts with criminal negligence to cause the death of any person," §565.024.3, RSMo 2000. Thus, under §565.024.1(2), the offense of involuntary manslaughter in the first degree, committed when an intoxicated automobile driver, acting with criminal negligence, kills another person, has been legislatively judged violent enough to make the offender a "violent" offender. If the legislature has determined that involuntary manslaughter, with its mental state of criminal negligence, is violent enough to rate a "violent offender" label, a mental state of criminal negligence is not a bar to an offense being deemed violent. Petitioner's claim to the contrary fails.

Analysis of the definitions of "violent" in Missouri case law also demonstrates that no mental state is necessary. The legislature has not established a definition of "violence" or "violent." Section 558.016.8 does not contain a definition of the term "nonviolent offense." Likewise, §558.016 in its entirety does not define "nonviolent offense" or "violent offense," and those terms are not defined in Chapter 558 of the Missouri Revised Statutes or in §556.061, RSMo Cum.Supp. 2003 and §556.063, RSMo 2000, which provide specific definitions for the criminal code. Senate Bill 5 (2003), which enacted §558.016.8, also does not contain any definition of "nonviolent offense." The General Assembly thus has not provided a definition of "nonviolent offense" or the converse term "violent offense" as used in §558.016.8.

When interpreting a statute, this Court looks to the plain and ordinary meaning of the words in the statute. *Kerperien v. Lumberman's Mut. Cas. Co.*, 100 S.W.3d 778, 781 (Mo. banc 2003). This Court "consider[s] the words used in a statute in their plain and ordinary meaning, which is found in the dictionary." *State v. Carson*, 941 S.W.2d 518, 521 (Mo. banc 1997); *City of Dellwood v. Twyford*, 912 S.W.2d 58, 60 (Mo. banc 1995).

This case turns on the definition of common-sense definition of "violent." Missouri courts have previously considered the dictionary definitions of "violent" and "violence." The Missouri Court of Appeals, Western District,

comprehensively analyzed the definitions of "violent" contained in a number of dictionaries. *State v. Mack*, 12 S.W.3d 349, 351-52 (Mo.App. W.D. 2000).[2] The various definitions cited by that court are as follows:

1. Violence is defined as an "exertion of any physical force so as to injure or abuse." *Webster's Third New International Dictionary* 2554 (1993). *Mack*, 12 S.W.3d at 352.
2. Violence is defined as "intense, turbulent, or furious and often destructive action or force." *Merriam Webster's Collegiate Dictionary* 1319 (10th ed. 1994). *Id*.
3. Violence is defined as "[u]njust or unwarranted use of force, ... accompanied by fury, vehemence, or outrage; physical force unlawfully exercised with the intent to harm." *Black's Law Dictionary* 1564 (7th ed. 1999). *Id.*

The Court of Appeals further cited cases from this Court and the Court of Appeals that stated similar definitions. *Id.* This Court in *State v. Hawkins,* 418 S.W.2d 921, 924 (Mo. banc 1967), held that "'violence' may consist of violent, menacing, turbulent, and threatening action or procedure."[3] The Missouri Court of Appeals

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[2]The court in *Mack* determined that spitting was not a violent offense because spitting was an act of derision or scorn rather than violence. 12 S.W.3d at 352.

[3]This Court in *Hawkins* determined that a robbery was "violent" due to the

broadly defined violence as "the exertion of any physical force considered with reference to its effect on another than the agent." *Boecker v. Aetna Cas. & Sur. Co.*, 281 S.W.2d 561, 564 (Mo.App. St.L. D. 1955)[4], *citing Webster's New International Dictionary, 2nd Ed*. The Court of Appeals has also defined violence as "physical force; force unlawfully exercised." *Agee v. Employers' Liability Assur. Corporation, Limited, of London, Eng.*, 213 Mo.App. 693, 253 S.W. 46, 48 (K.C.D. 1923).[5]

The Missouri Court of Appeals, Southern District, has also addressed the definition of a violent offense. *State ex rel. Moore v. Sweeney*, 32 S.W.3d 212 (Mo.App. S.D. 2000). The *Moore* court conducted an analysis of §558.046(1)(a), RSMo 2000, which allows for a sentence reduction for persons convicted of nonviolent offenses involving drugs and alcohol who completed a rehabilitation program in prison. The Court of Appeals held that "§558.046(1)(a), in referring to

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defendant's brandishing a gun and threatening to kill the store clerk. 418 S.W.2d at 924.

[4]The court determined that a car striking a tree was a violent act and thus a collusion. *Boecker*, 281 S.W.2d at 565.

[5]The court determined that the stealing of a pin was violent due to the fact that the victim's clothes were torn when the pin was stolen. *Agee*, 253 S.W. at 48.

'a crime that did not involve violence or the threat of violence,' is referring, *inter alia*, to a crime that did not involve the use of physical force or the threat of physical force against the victim (or someone else)." *Moore*, 32 S.W.3d at 216. The Court of Appeals, therefore, in accordance with the definitions cited in *Mack*, determined that physical force is a requirement to find violence, and that an act that involved the use of physical force cannot be considered a nonviolent act. The *Moore* court then determined that striking a person with a baseball bat was an act of physical force and thus a violent act. 32 S.W.3d at 216.

In sum, the courts of this State have defined violence as the use of any physical force on a person other than the actor and generally have not established a heightened *mens rea* requirement. The conduct in this case is violent under the dictionary definition because petitioner's offense involved extreme physical force directed at the victim. Petitioner Matthews drove his car northbound in the southbound lanes of U.S. Highway 169 and hit a car driven by Candace Crawford, a seventeen-year-old high school senior, causing Ms. Crawford extreme physical injuries. Resp. Ex. A at 11. Ms. Crawford suffered a closed head trauma, brain fluid and blood leaking out of her ear, a crushed right femur, a "completely exploded" knee, two broken bones in her left arm, a collapsed left lung, and various other injuries. Resp. Ex. B at 6. Ms. Crawford, at the time of sentencing, had been

through three surgeries for her injuries and was facing at least three more surgeries in addition to a future knee replacement surgery. *Id*. Injuries of this sort necessarily stem from a violent act.

Ms. Crawford suffered substantial physical injury through a violent act of physical force. Petitioner Matthews used physical force through his vehicle to inflict substantial damage on Ms. Crawford and her vehicle. The level of physical force in this case, a vehicle wreck with extreme physical injuries and consequences for Ms. Crawford, is far greater than the physical force in *Moore*, simply hitting another person with a baseball bat. Petitioner's offense was violent under the standard dictionary definition.[6] Petitioner's claim therefore fails.

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[6]Consistent with the dictionary definitions of "violent," the Missouri Sentencing Guidelines Commission has found that attempted assault in the second degree, the offense petitioner pled guilty to, is a violent offense. *See Report on Recommended Sentencing*, found at http://www.courts.mo.gov/index.nsf/0/25d919acbfafc05586256ec10059ce1c/$FILE/Report%20on%20Recommended%20Sentences%20-%20June%202004.pdf at page 22 (report dated June 2004). Respondent agrees with this conclusion. The Sentencing Commission reasonably determined that attempt to commit assault in the second degree, with its element of

Petitioner suggests that federal law implies that his offense is not a crime of violence. Petitioner cites federal statutes such as 18 U.S.C. §16 and 18 U.S.C. §924(c)(3)[7] to show that petitioner's offense would not be considered a violent crime under federal law. Respondent assumes that petitioner will cite *Leocal v. Ashcroft*, no.03-583 (Nov. 9, 2004), the Supreme Court's most recent interpretation of 18 U.S.C. §16, in his reply brief as petitioner's opening brief was filed before this decision was handed down. The Supreme Court in *Leocal* held that 18 U.S.C. §16, the federal definition of a violent crime, requires a heightened mental state for DWI assault cases in order for DWI assault cases to be considered violent crimes and subject an alien to deportation. Slip op. at 6-7. Thus, *Leocal* is based entirely on the interpretation of a specific federal statute for the purposes of federal immigration law.

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causation and physical injury, constituted a violent offense. *See* §565.060, RSMo 2000, and §564.011.1, RSMo 2000.

[7]Section 16 states the general federal definition for a "crime of violence." Section 924(c)(3) restates that definition in the context of enhanced sentencing for dug trafficking offenses. As the statutory language in each section is identical, respondent will refer only to 18 U.S.C. §16 in this brief.

Petitioner's claim fails because federal law and the interpretation of federal statutes has absolutely no bearing on whether, as a matter of Missouri law, petitioner's crime is violent. Under the principles of comity and dual sovereignty, federal criminal statutes and their interpretation are not binding on Missouri courts. *Leocal* was entirely an opinion based on statutory construction, not a decision based on constitutional law. *Leocal*, slip op. at 6-11. Federal criminal statutes and the Supreme Court's decision in *Leocal* are not binding on this Court.

This Court likewise should decline to find 18 U.S.C. §16, 18 U.S.C. §924(c)(3), and *Leocal* persuasive. Section 16 and §924(c)(3) state as follows in identical terms:

> (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Thus, 18 U.S.C. §16 explicitly requires an elements test. The Supreme Court used an elements test in *Leocal* when interpreting 18 U.S.C. §16 and Florida Stat. §316.193(3)(c)(2). *Leocal*, slip op. at 5-7.

The elements test required by 18 U.S.C. §16 is not required under Missouri law. The General Assembly does not require an elements test in interpreting §558.016.8. By declining to give a definition for "nonviolent offense" in §558.016.8 and by declining to classify a list of offenses as "nonviolent offenses," the General Assembly has granted judges the power to look at each case under the circumstances of that particular case and determine if the offense in each individual case is violent or non-violent. Section 558.016.8 therefore looks to the totality of the circumstances in a specific case and does not adopt an elements test.

Federal law requires an elements test. Section 558.016.8 does not require such a test and in fact rejects an elements test. Thus, the federal statutes cited by petitioner and the Supreme Court's opinion in *Leocal*, all of which explicitly state and apply an elements test to determine violence, are inapplicable to this case. The federal law, which uses a different test than §558.016.8, simply tends to confuse the issue of petitioner's crime under the totality of the circumstances test espoused by the General Assembly. *Leocal* and 18 U.S.C. §16 thus are not persuasive authority in this case.

Further, *Leocal* and 18 U.S.C. §16 call for an active use of force for a violent offense and thus a higher *mens rea* requirement. Missouri law does not require that a violent offense have a heightened *mens rea*; involuntary DWI manslaughter, with

its mental state of criminal negligence, is considered violent under Missouri law. §217.011(11). Missouri courts have consistently not required a mental state to defining "violence." Thus, Missouri law requires a different result in this case than the federal criminal code would produce. The federal statutes and cases in this area of law, which are contrary to Missouri cases and statutes, need not be followed.

Finally, the opinion in *Leocal* dealt with a situation in which the United States was seeking to deport an offender because of the government's position that the alien had committed a violent crime. Slip op. at 1. The government was thus attempting to attach deportation to the list of consequences stemming from petitioner's crime. In this case, to the contrary, the government is not seeking to extend petitioner's sentence or attach collateral consequences to petitioner's plea. Petitioner is seeking early release from imprisonment. In order to protect the public, and in the absence of any statutory direction to the contrary, respondent properly considered the circumstances of petitioner's crime. The penalty of deportation, with its almost permanent effect, requires a more stringent safeguard than requiring petitioner to remain in the Department of Corrections until he receives executive parole. Federal law is not persuasive in this case. Petitioner's claim must fail.

CONCLUSION

For the above-mentioned reasons, respondent prays that this Court quash its preliminary writ of mandamus.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify that the attached brief complies with the limitations contained in Supreme Court Rule 84.06 and contains _____ words, excluding the cover and this certification, as determined by WordPerfect 9 software; that the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses, using McAfee Anti-virus software, and is virus-free; and that a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed, postage prepaid, this ___ day of _____, 2003, to:

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§558.016.8, RSMo 2000

8. An offender convicted of a nonviolent class C or class D felony with no prior prison commitments, after serving one hundred twenty days of his or her sentence, may, in writing, petition the court to serve the remainder of his or her sentence on probation, parole, or other court-approved alternative sentence. No hearing shall be conducted unless the court deems it necessary. Upon the offender petitioning the court, the department of corrections shall submit a report to the sentencing court which evaluates the conduct of the offender while in custody, alternative custodial methods available to the offender, and shall recommend whether the offender be released or remain in custody. If the report issued by the department is favorable and recommends probation, parole, or other alternative sentence, the court shall follow the recommendations of the department if the court deems it appropriate. Any placement of an offender pursuant to section 559.115, RSMo, shall be excluded from the provisions of this subsection.

§217.010, RSMo 2000

As used in this chapter and chapter 558, RSMo, unless the context clearly indicates otherwise, the following terms shall mean:

(1) “Administrative segregation unit”, a cell for the segregation of offenders from the general population of a facility for relatively extensive periods of time;

(2) “Board”, the board of probation and parole;

(3) “Chief administrative officer”, the institutional head of any correctional facility or his designee;

(4) “Correctional center”, any premises or institution where incarceration, evaluation, care, treatment, or rehabilitation is provided to persons who are under the department's authority;

(5) “Department”, the department of corrections of the state of Missouri;

(6) “Director”, the director of the department of corrections or his designee;

(7) “Disciplinary segregation”, a cell for the segregation of offenders from the general population of a correctional center because the offender has been found to have committed a violation of a division or facility rule and other available means are inadequate to regulate the offender's behavior;

(8) “Division”, a statutorily created agency within the department or an agency created by the departmental organizational plan;

(9) “Division director”, the director of a division of the department or his designee;

(10) “Local volunteer community board”, a board of qualified local community volunteers selected by the court for the purpose of working in partnership with the court and the department of corrections in a reparative probation program;

(11) “Nonviolent offender”, any offender who is convicted of a crime other than murder in the first or second degree, involuntary manslaughter, kidnapping, forcible rape, forcible sodomy, robbery in the first degree or assault in the first degree;

(12) “Offender”, a person under supervision or an inmate in the custody of the department;

(13) “Probation”, a procedure under which a defendant found guilty of a crime upon verdict or plea is released by the court without imprisonment, subject to conditions imposed by the court and subject to the supervision of the board;

(14) “Volunteer”, any person who, of his own free will, performs any assigned duties for the department or its divisions with no monetary or material compensation.